

REMARKS

Claims 22, 28-34 and 79 stand rejected under 35 U.S.C. §103(a) as being obvious in light of Kuslich (5,549,679) in view of Gibson (6,413,536). This rejection is respectfully traversed. Claims 22 and 28 have been amended to clarify that the method is directed to treating the vertebral bone and not the disc space. No new matter has been added.

As discussed with the Examiner on 12/13/07 and stated in Applicants responses dated 1/10/07, 5/29/07 and 6/29/07 and 12/13/07, incorporated in the entirety herein, the '679 Patent only discloses a method of treating the intervertebral disc space by promoting fusion between adjacent vertebral bones and not treating the bones themselves. There is absolutely no disclosure in the '679 Patent of treating the vertebral bone itself. The '679 Patent does not disclose placing a container within a vertebral bone, nor does the '679 Patent disclose placing a first and a second fill material into the container. Further, Gibson does not disclose a container at all.

Independent claims 22 and 28 have been amended to recite that the method steps of creating a cavity within a vertebral bone and inserting a container into that cavity. Claims 22 and 28 clearly recite treating a vertebral bone and there is no mention of the disc or interbody space.

Because neither of the cited references teach or suggest placing a container within a vertebral bone and filling the container with a first and second fill material, Applicants respectfully request the rejection of Claims 22, 28-34 and 79 be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brad Pedersen", with a long horizontal flourish extending to the right.

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